Tulsidas vs. State of Rajasthan & Anr.
(S.B.Criminal Revision No.393/93)

Dated:- 17.1.2007.

HON'BLE MR.JUSTICE G.S.SARRAF

Mr. P.N.Mohnani,for the petitioner.
Mr.S.N.Tiwari, Public Prosecutor.
Mr.Sandeep Mehta, for respondent no.2.

REPORTABLE

The case relates to an occurrence of the year 1988.

Briefly stated the facts are that on a complaint filed by the petitioner the police submitted final report after investigation saying that only an offence u/s 323 IPC was made out which was a non-cognizable offence. The petitioner thereupon filed a protest petition on 21.7.1988. Chief Judicial Magistrate,Pali by order dated 16.5.1989 dismissed the protest petition of the petitioner and accepted the final report but gave liberty to the petitioner to produce evidence u/ss. 200 and 202 Cr.P.C.. The petitioner filed a revision petition against the above order which was dismissed by Sessions Judge, Pali by order dated 23.12.1989 holding that the Chief Judicial Magistrate was not competent to make enquiry u/ss. 200 and 202 Cr.P.C.. Against this order of the Sessions Judge,Pali, the petitioner filed a miscellaneous petition before this Court which was dismissed by this Court by order dated 23.2.1991 and it held "As the order of taking cognizance is a judicial order and when once the order has been passed by the learned Magistrate, by which he refused to take

cognizance against the accused and rejected the protest petition filed by the complainant then he was not competent to proceed with the matter again under Sections 200 and 202 Cr.P.C". The petitioner did not challenge this order. However, the petitioner filed a fresh complaint on 27.5.1989 on the same facts whereupon the respondent no. 2 filed an application on 5.6.1989 praying that no evidence be recorded with respect to the same incident. This application of the respondent no. 2 was dismissed by Chief Judicial Magistrate, Pali by order dated 30.10.1991. Respondent no. 2 then filed a revision petition against the order of Chief Judicial Magistrate,Pali which was allowed by the Sessions Judge, Pali by order dated 29.7.1992 saying that Chief Judicial Magistrate, Pali was not competent to hold enquiry u/ss. 200 and 202 Cr.P.C in view of the order dated 23.2.1991 of the High Court. The petitioner has filed this revision petition against the said order.

Learned counsel for the petitioner submits that the Magistrate is competent to hold an enquiry u/ss. 200 and 202 Cr.P.C. in spite of the fact that finalreport has been accepted and protest petition has been dismissed.He has placed reliance on 2003 Cr.L.J. 866.

Learned counsel for the respondent no. 2 supports the order of the Sessions Judge, Pali dated 29.7.1992.

Chief Judicial Magistrate, Pali accepted the final report

and dismissed the protest petition of the petitioner after giving full opportunity of hearing to both the parties. Second complaint on the same facts can be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a mis-understanding of the nature of complaint or if the order was manifestly absurd and unjust or where new facts were brought on record. If we examine the facts of the present case then we find that no such circumstances exist here. The order of accepting final report and dismissing the protest petition has been passed after full hearing and there is no mis-understanding of the nature of complaint on the part of the Magistrate and the order of the Magistrate cannot be said to be absurd or unjust and no new facts have been brought on record. Moreover, in this matter the High Court has alrady held that the Magistrate was not competent to proceed with the matter again under Sections 200 and 202 Cr.P.C. This order attained finality.Therefore, in this case the second complaint could not be entertained.

For the reasons stated above, I find no ground to interefere with the order of Sessions Judge, Pali.

The revision petition is, therefore, dismissed and the order dated 29.7.1992 of Sessions Judge, Pali is upheld.

(G.S.SARRAF),J.